



Substitute House Bill No. 5114

Public Act No. 10-141

***AN ACT APPLYING THE PROVISIONS OF THE CONNECTICUT
UNIFORM SECURITIES ACT TO THE REQUIREMENT THAT
BROKER-DEALERS COMPLY WITH THE CURRENCY AND
FOREIGN TRANSACTIONS REPORTING ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 36b-1 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, and 36b-40 to 36b-52, inclusive, and 36b-60 to 36b-80, inclusive, shall be known as the "Securities and Business Investments Law of Connecticut" and shall be applicable to all issuers of securities, broker-dealers, agents, investment advisers, investment adviser agents, sellers of business opportunities, and offerors in a tender offer, and to such other corporations, unincorporated associations, partnerships, limited liability companies and individuals who subject themselves to special provisions in said sections, or who, by violating any of the provisions of said sections become subject to the penalties provided in said sections.

Sec. 2. Section 36b-2 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Substitute House Bill No. 5114

Sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, may be cited as the "Connecticut Uniform Securities Act".

Sec. 3. Section 36b-3 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

As used in sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, unless the context otherwise requires:

(1) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in (A) effecting transactions in a security exempted by subdivision (1), (2), (3), (4), (6), (9), (10), (11) or (22) of subsection (a) of section 36b-21, (B) effecting transactions exempted by subsection (b) of section 36b-21, as amended by this act, except for transactions exempted by subdivisions (10), (13) or (14) of said subsection, (C) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, or (D) effecting transactions in any covered security, except for covered securities within the meaning of Sections 18(b)(2) or 18(b)(4)(D) of the Securities Act of 1933. "Agent" does not include such other persons not within the intent of this subdivision as the commissioner may by regulation or order determine. A general partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition and any compensation that such person receives is directly or indirectly related to purchases or sales of securities.

(2) "Associated person" has the meaning given to that term in Section 3(a)(21) of the Securities Exchange Act of 1934.

Substitute House Bill No. 5114

(3) "Blank check company" means any company that (A) devotes substantially all of its efforts to establishing a new business in which planned principal operations have not commenced or, that has commenced planned principal operations, but has not derived significant revenue from such operations; and (B) has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(4) "Branch office" means any location other than the main office at which an agent or investment adviser agent regularly conducts business on behalf of a broker-dealer or investment adviser, or any location that is held out as such, excluding: (A) Any location that is established solely for customer service or back-office-type functions where no sales activities are conducted and that is not held out to the public as a branch office, (B) any location that is the agent's or investment adviser agent's primary residence, provided (i) only agents or investment adviser agents who reside at the location and are members of the same immediate family conduct business at the location, (ii) the location is not held out to the public as an office and the agent or investment adviser agent does not meet with customers at the location, (iii) neither customer funds nor securities are handled at that location, (iv) the agent or investment adviser agent is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such agent or investment adviser agent, (v) the agent's or investment adviser agent's correspondence and communications with the public are subject to the supervision of the broker-dealer or investment adviser with which such agent or investment adviser agent is associated, (vi) electronic communications, including e-mail, are made through the electronic system of the broker-dealer or investment adviser, (vii) all orders for securities are entered through the designated branch office or an electronic system

Substitute House Bill No. 5114

established by a broker-dealer that is reviewable at the branch office, (viii) written supervisory procedures pertaining to supervision of activities conducted at the residence are maintained by the broker-dealer or investment adviser, and (ix) a list of the residence locations is maintained by the broker-dealer or investment adviser, (C) any location, other than a primary residence, that is used for securities or investment advisory business for less than thirty business days in any one calendar year, provided the broker-dealer or investment adviser complies with the provisions of subparagraph (B)(ii), (iii), (iv), (v), (vi), (vii) and (viii) of this subdivision, (D) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office, (E) any location that is used primarily to engage in nonsecurities activities and from which the agent or investment adviser agent effects no more than twenty-five securities transactions in any one calendar year, provided any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the agent or investment adviser agent conducting business at the nonbranch locations is directly supervised, (F) the floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers, (G) a temporary location established in response to the implementation of a business continuity plan, or (H) any other location not within the intent of this subdivision as the commissioner may determine. As used in this subdivision, the term "business day" does not include any partial business day, provided the agent or investment adviser agent spends at least four hours on such day at the designated branch office of such agent or investment adviser agent during the hours that such office is normally open for business.

(5) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for such person's own account. "Broker-dealer" does not include (A) an agent,

Substitute House Bill No. 5114

(B) an issuer, (C) a bank, as defined in Section 3(a)(6) of the Securities Exchange Act of 1934, when conducting activities that would except it from the definitions of "broker" or "dealer" under Sections 3(a)(4) or 3(a)(5) of the Securities Exchange Act of 1934, (D) a person who has no place of business in this state if such person effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) a bank and trust company, a national banking association, a savings bank, a savings and loan association, a federal savings bank, a federal savings and loan association, a credit union, a federal credit union, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust, or other financial institution or institutional buyer, whether acting for itself or as trustee, or (E) such other persons not within the intent of this subdivision as the commissioner may by regulation or order determine.

(6) "Commissioner" means the Banking Commissioner or any person appointed or designated by the Banking Commissioner to administer sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act.

(7) "Covered security" has the meaning given to that term in Section 18(b) of the Securities Act of 1933.

(8) "Fraud", "deceit" and "defraud" are not limited to common-law deceit.

(9) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(10) "International banking institution" means an international financial institution, as defined in 22 USC 262r, as from time to time amended, of which the United States is a member and whose securities

Substitute House Bill No. 5114

are exempt from registration under the Securities Act of 1933.

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include (A) an investment adviser agent; (B) a bank, as defined in Section 202(a)(2) of the Investment Advisers Act of 1940, or a bank holding company, as defined in the Bank Holding Company Act of 1956, that is excepted from the definition of "investment adviser" in Section 202(a)(11) of the Investment Advisers Act of 1940; (C) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of such person's profession; (D) a broker-dealer whose performance of these services is solely incidental to the conduct of such person's business as a broker-dealer and who receives no special compensation for them; (E) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (F) a person whose advice, analyses or reports relate only to securities exempted by subdivision (1) of subsection (a) of section 36b-21; (G) any insurance company under the supervision of the Insurance Commissioner or any affiliate thereof, as defined in subsection (b) of section 38a-129, when providing services to separate accounts of that insurance company or registered investment companies all of whose shares are owned by such insurance company or its insurance company affiliates or by the separate accounts of that insurance company or its insurance company affiliates; and (H) such other persons not within the intent of this subdivision as the commissioner may by regulation or order designate.

(12) (A) "Investment adviser agent" includes (i) any individual,

Substitute House Bill No. 5114

including an officer, partner or director of an investment adviser, or an individual occupying a similar status or performing similar functions, employed, appointed or authorized by or associated with an investment adviser to solicit business from any person for such investment adviser in this state and who receives compensation or other remuneration, directly or indirectly, for such solicitation; or (ii) any partner, officer, or director of an investment adviser, or an individual occupying a similar status or performing similar functions, or other individual employed, appointed, or authorized by or associated with an investment adviser, who makes any recommendation or otherwise renders advice regarding securities to clients and who receives compensation or other remuneration, directly or indirectly, for such advisory services.

(B) "Investment adviser agent" does not include an individual employed, appointed or authorized by, associated with or acting on behalf of an investment adviser exempt from registration under subdivision (1) or (2) of subsection (e) of section 36b-6, who is a "supervised person", as defined in Section 202(a)(25) of the Investment Advisers Act of 1940, unless such supervised person is an "investment adviser representative", as defined in Securities and Exchange Commission Rule 203A-3, 17 CFR 275.203A-3.

(C) "Investment adviser agent" does not include such other individuals not within the intent of this subdivision as the commissioner may by regulation or order designate.

(13) "Issuer" means any person who issues or proposes to issue any security; except that (A) with respect to a certificate of deposit, a voting-trust certificate, or a collateral-trust certificate, or with respect to a certificate of interest or a share in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, "issuer" means any person performing the acts and assuming the duties of

Substitute House Bill No. 5114

depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; (B) with respect to an equipment trust certificate or similar security serving the same purpose, "issuer" means any person who uses or will use the property, any person to whom the property or equipment is or will be leased or conditionally sold or any person who is otherwise contractually responsible for assuring payment of the certificate; and (C) with respect to a fractional undivided interest in oil, gas or other mineral leases or in payments out of production under a lease, right or royalty, "issuer" means any owner of an interest in the lease or in payments out of production under a lease, right or royalty, whether whole or fractional, who creates fractional interests for the purpose of sale.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Person" means an individual, a corporation, a limited liability company, a partnership, a limited partnership, a limited liability partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

(16) (A) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. (B) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. (C) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. (D) Nothing in this subdivision shall limit or diminish the full meaning of the terms "sale", "sell", "offer" or "offer to sell" as construed by the courts of this state.

Substitute House Bill No. 5114

(E) A purported gift of assessable stock is considered to involve an offer and sale. (F) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security. (G) The terms defined in this subdivision do not include: (i) Any bona fide pledge or loan; (ii) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (iii) any act incident to a class vote by security holders on a merger, exchange of securities for securities, consolidation, reclassification of securities, or sale of assets in consideration of the issuance of securities or securities and cash of another person other than an individual; or (iv) any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved by any state or federal court.

(17) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisers Act of 1940" and "Investment Company Act of 1940" mean the federal statutes of those names, as from time to time amended.

(18) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(19) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, interests of limited partners in a limited partnership, collateral-trust certificate,

Substitute House Bill No. 5114

preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral rights, put, call, straddle, option, or privilege on any security or group or index of securities, including any interest in or based on the value of such security, group or index, put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" includes (A) a certificated and an uncertificated security, and (B) as an "investment contract", an interest in a limited liability company or limited liability partnership, but does not include any insurance or endowment policy or annuity contract issued by an insurance company that is subject to regulation by the Insurance Commissioner.

(20) "Self-regulatory organization" means a national securities exchange, a national securities association of broker-dealers or a clearing agency registered under the Securities Exchange Act of 1934 or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(21) "Shell company" or "dormant company" means any company which does not pursue nor has the financial capacity to pursue a business plan or purpose.

(22) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

Sec. 4. Subsections (b) and (c) of section 36b-5 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective from passage*):

Substitute House Bill No. 5114

(b) (1) It is unlawful for any investment adviser that is registered or required to be registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, to have, enter into, extend or renew any investment advisory contract, whether written or oral, unless it is signed by the client or clients and discloses in writing: (A) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client; (B) that an assignment of the contract may not be made by the investment adviser without the consent of the other party to the contract; (C) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change; (D) the fee arrangement between the investment adviser and the client or clients; and (E) the services which the investment adviser will render. (2) Subparagraph (A) of subdivision (1) of this subsection does not prohibit an investment advisory contract which provides for compensation based upon the total or net asset value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. (3) "Assignment", as used in subparagraph (B) of subdivision (1) of this subsection, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of the beneficial ownership of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, but, if the investment adviser is a partnership, an assignment of an investment advisory contract is not considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(c) It is unlawful for any investment adviser that is registered or required to be registered under sections 36b-2 to [36b-33] 36b-34,

Substitute House Bill No. 5114

inclusive, as amended by this act, to take or have custody of any securities or funds of any client if: (1) The commissioner by regulation prohibits custody; or (2) in the absence of a regulation, the investment adviser fails to notify the commissioner that he has or may have custody.

Sec. 5. Subsections (a) to (c), inclusive, of section 36b-6 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) No person shall transact business in this state as a broker-dealer unless such person is registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act. No person shall transact business in this state as a broker-dealer in contravention of a sanction that is currently effective imposed by the Securities and Exchange Commission or by a self-regulatory organization of which such person is a member if the sanction would prohibit such person from effecting transactions in securities in this state. No individual shall transact business as an agent in this state unless such individual is (1) registered as an agent of the broker-dealer or issuer whom such individual represents in transacting such business, or (2) an associated person who represents a broker-dealer in effecting transactions described in subdivisions (2) and (3) of Section 15(h) of the Securities Exchange Act of 1934. No individual shall transact business in this state as an agent of a broker-dealer in contravention of a sanction that is currently effective imposed by the Securities and Exchange Commission or a self-regulatory organization of which the employing broker-dealer is a member if the sanction would prohibit the individual employed by such broker-dealer from effecting transactions in securities in this state.

(b) No issuer shall employ an agent unless such agent is registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act. No broker-dealer shall employ an agent unless such agent is (1)

Substitute House Bill No. 5114

registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or (2) an associated person who represents a broker-dealer in effecting transactions described in subdivisions (2) and (3) of Section 15(h) of the Securities Exchange Act of 1934. The registration of an agent is not effective during any period when such agent is not associated with a particular broker-dealer registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make such individual an agent, both the agent and the broker-dealer or issuer shall promptly notify the commissioner.

(c) (1) No person shall transact business in this state as an investment adviser unless registered as such by the commissioner as provided in sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or exempted pursuant to subsection (e) of this section. No person shall transact business, directly or indirectly, in this state as an investment adviser if the registration of such investment adviser is suspended or revoked or, in the case of an investment adviser who is an individual, the investment adviser is barred from employment or association with an investment adviser or broker-dealer by order of the commissioner, the Securities and Exchange Commission or a self-regulatory organization.

(2) No individual shall transact business in this state as an investment adviser agent unless such individual is registered as an investment adviser agent of the investment adviser for which such individual acts in transacting such business. An investment adviser agent registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, who refers advisory clients to another investment adviser registered under said sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or to an investment adviser registered with the Securities and Exchange Commission that has filed

Substitute House Bill No. 5114

a notice under subsection (e) of this section, is not required to register as an investment adviser agent of such investment adviser if the only compensation paid for such referral services is paid to the investment adviser with whom the individual is employed or associated. No individual shall transact business, directly or indirectly, in this state as an investment adviser agent on behalf of an investment adviser if the registration of such individual as an investment adviser agent is suspended or revoked or the individual is barred from employment or association with an investment adviser by an order of the commissioner, the Securities and Exchange Commission or a self-regulatory organization.

(3) No investment adviser shall engage an investment adviser agent unless such investment adviser agent is registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act. The registration of an investment adviser agent is not effective during any period when such investment adviser agent is not associated with a particular investment adviser. When an investment adviser agent begins or terminates a connection with an investment adviser, both the investment adviser agent and the investment adviser shall promptly notify the commissioner. If an investment adviser or investment adviser agent provides such notice, such investment adviser or investment adviser agent shall not be liable for the failure of the other to give such notice.

Sec. 6. Subsection (i) of section 36b-6 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(i) (1) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or to a notice filing of an investment adviser registered with the Securities and Exchange Commission, and an investment adviser registered with the Securities and Exchange Commission may succeed to the current

Substitute House Bill No. 5114

registration of an investment adviser or to a notice filing of another investment adviser registered with the Securities and Exchange Commission, by filing as a successor an application for registration pursuant to section 36b-7 or a notice pursuant to subsection (e) of this section for the unexpired portion of the current registration or notice filing and paying the fee required by subsection (a) of section 36b-12.

(2) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its management. The amendment shall become effective when filed or on a date designated by the registrant in its filing. The new organization shall be a successor to the original registrant for the purposes of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act. If there is a material change in management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, shall stop conducting its securities business or investment advisory business other than winding down transactions and shall file for withdrawal of its broker-dealer or investment adviser registration not later than forty-five days after filing its amendment to effect succession.

(3) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment shall become effective when filed or on a date designated by the registrant.

(4) The commissioner may, by regulation adopted, in accordance with chapter 54, or order, prescribe the means by which a change of control of a broker-dealer or investment adviser may be made.

(5) Nothing in this subsection shall relieve a registrant of its

Substitute House Bill No. 5114

obligation to pay agent and investment adviser agent transfer fees as described in subsection (d) of section 36b-12.

Sec. 7. Section 36b-10 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Each application for registration under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, shall be sworn to, before a person qualified to administer oaths, by the person making the same and shall state that the alleged facts therein contained are true to his own knowledge. If such person is a partnership, such oath shall be made by a general partner thereof, and, if such person is a corporation or other form of association, such oath shall be made by an executive officer thereof.

Sec. 8. Section 36b-11 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Each application for registration under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, shall be accompanied by a photograph as defined by the commissioner, unless the commissioner waives the requirement of such photograph. If the applicant for registration as a broker-dealer or investment adviser is a sole proprietorship, the photograph shall be of the sole proprietor; if the application is for a partnership, it shall be accompanied by a photograph of each general partner; if the application is for a corporation, it shall be accompanied by a photograph of each principal officer or director as determined by the commissioner.

Sec. 9. Subsection (c) of section 36b-14 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) If the information contained in any document filed with the commissioner under this section is or becomes inaccurate or

Substitute House Bill No. 5114

incomplete in any material respect, the person making the filing shall promptly file a correcting amendment unless notification of the correction has been given under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act.

Sec. 10. Section 36b-15 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The commissioner may, by order, deny, suspend or revoke any registration or, by order, restrict or impose conditions on the securities or investment advisory activities that an applicant or registrant may perform in this state if the commissioner finds that (1) the order is in the public interest, and (2) the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser: (A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; (B) has wilfully violated or wilfully failed to comply with any provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or a predecessor statute or any regulation or order under said sections or a predecessor statute; (C) has been convicted, within the past ten years, of any misdemeanor involving a security, any aspect of a business involving securities, commodities, investments, franchises, business opportunities, insurance, banking or finance, or any felony, provided any denial, suspension or revocation of such registration shall be in accordance with the provisions of section 46a-80; (D) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any

Substitute House Bill No. 5114

conduct or practice involving any aspect of a business involving securities, commodities, investments, franchises, business opportunities, insurance, banking or finance; (E) is the subject of a cease and desist order of the commissioner or an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser or investment adviser agent; (F) is the subject of any of the following sanctions that are currently effective or were imposed within the past ten years: (i) An order issued by the securities administrator of any other state or by the Securities and Exchange Commission or the Commodity Futures Trading Commission denying, suspending or revoking registration as a broker-dealer, agent, investment adviser, investment adviser agent or a person required to be registered under the Commodity Exchange Act, 7 USC 1 et seq., as from time to time amended, and the rules and regulations thereunder, or the substantial equivalent of those terms, as defined in sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, (ii) an order of the Securities and Exchange Commission or Commodity Futures Trading Commission suspending or expelling such applicant, registrant or person from a national securities or commodities exchange or national securities or commodities association registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act, 7 USC 1 et seq., as from time to time amended, or, in the case of an individual, an order of the Securities and Exchange Commission or an equivalent order of the Commodity Futures Trading Commission barring such individual from association with a broker-dealer or an investment adviser, (iii) a suspension, expulsion or other sanction issued by a national securities exchange or other self-regulatory organization registered under federal laws administered by the Securities and Exchange Commission or the Commodity Futures Trading Commission if the effect of the sanction has not been stayed or overturned by appeal or otherwise, (iv) a United States Post Office fraud order, (v) a denial, suspension, revocation or other sanction issued by the commissioner or any other

Substitute House Bill No. 5114

state or federal financial services regulator based upon nonsecurities violations of any state or federal law under which a business involving investments, franchises, business opportunities, insurance, banking or finance is regulated, or (vi) a cease and desist order entered by the Securities and Exchange Commission, a self-regulatory organization or the securities agency or administrator of any other state or Canadian province or territory; but the commissioner may not (I) institute a revocation or suspension proceeding under this subparagraph more than five years from the date of the sanction relied on, and (II) enter an order under this subparagraph on the basis of an order under any other state act unless that order was based on facts which would constitute a ground for an order under this section; (G) may be denied registration under federal law as a broker-dealer, agent, investment adviser, investment adviser agent or as a person required to be registered under the Commodity Exchange Act, 7 USC 1 et seq., as from time to time amended, and the rules and regulations promulgated thereunder, or the substantial equivalent of those terms as defined in sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act; (H) has engaged in fraudulent, dishonest or unethical practices in the securities, commodities, investment, franchise, business opportunity, banking, finance or insurance business, including abusive sales practices in the business dealings of such applicant, registrant or person with current or prospective customers or clients; (I) is insolvent, either in the sense that the liabilities of such applicant, registrant or person exceed the assets of such applicant, registrant or person, or in the sense that such applicant, registrant or person cannot meet the obligations of such applicant, registrant or person as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this subparagraph without a finding of insolvency as to the broker-dealer or investment adviser; (J) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b) of this section; (K) has failed

Substitute House Bill No. 5114

reasonably to supervise: (i) The agents or investment adviser agents of such applicant or registrant, if the applicant or registrant is a broker-dealer or investment adviser; or (ii) the agents of a broker-dealer or investment adviser agents of an investment adviser, if such applicant, registrant or other person is or was an agent, investment adviser agent or other person charged with exercising supervisory authority on behalf of a broker-dealer or investment adviser; (L) in connection with any investigation conducted pursuant to section 36b-26, as amended by this act, or any examination under subsection (d) of section 36b-14, has made any material misrepresentation to the commissioner or upon request made by the commissioner, has withheld or concealed material information from, or refused to furnish material information to the commissioner, provided, there shall be a rebuttable presumption that any records, including, but not limited to, written, visual, audio, magnetic or electronic records, computer printouts and software, and any other documents, that are withheld or concealed from the commissioner in connection with any such investigation or examination are material, unless such presumption is rebutted by substantial evidence; (M) has wilfully aided, abetted, counseled, commanded, induced or procured a violation of any provision of sections 36b-2 to [36b-33] ~~36b-34~~, inclusive, as amended by this act, or a predecessor statute or any regulation or order under such sections or a predecessor statute; (N) after notice and opportunity for a hearing, has been found within the previous ten years: (i) By a court of competent jurisdiction, to have wilfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investments, franchises, business opportunities, insurance, banking or finance is regulated; (ii) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser agent or similar person; or (iii) to have been suspended or expelled from membership by or participation in a securities exchange or securities association

Substitute House Bill No. 5114

operating under the securities laws of a foreign jurisdiction. As used in this subparagraph, "foreign" means a jurisdiction outside of the United States; or (O) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this subparagraph, and the commissioner shall vacate any such order when the deficiency has been corrected. The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when the registration became effective unless the proceeding is instituted within one hundred eighty days of the effective date of such registration.

(b) The following provisions govern the application of subparagraph (J) of subdivision (2) of subsection (a) of this section: (1) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer if the broker-dealer is an individual, or (B) an agent of the broker-dealer; (2) the commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (A) the investment adviser if the investment adviser is an individual, or (B) any other person who represents the investment adviser in doing any of the acts which make the investment adviser an investment adviser; (3) the commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both; (4) the commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer; (5) the commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When the commissioner finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, the commissioner may by order condition the applicant's registration as a broker-dealer upon the applicant's not transacting business in this state

Substitute House Bill No. 5114

as an investment adviser; (6) the commissioner may by regulation provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make the investment adviser an investment adviser.

(c) The commissioner may by order summarily postpone or suspend registration or require a registrant to take or refrain from taking such action that in the opinion of the commissioner will effectuate the purposes of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser agent, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(e) (1) Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser agent, or withdrawal of an application for registration as a broker-dealer, agent, investment

Substitute House Bill No. 5114

adviser or investment adviser agent, becomes effective ninety days after receipt of an application to withdraw such registration or a notice of intent to withdraw such application for registration or within such shorter period of time as the commissioner may determine, unless a denial, revocation or suspension proceeding is pending when the application or notice is filed or a proceeding to deny, revoke, suspend or impose conditions upon the withdrawal is instituted within ninety days after the application or notice is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a denial, revocation or suspension proceeding under subsection (a) of this section within one year after withdrawal became effective.

(2) If the registration of a broker-dealer, agent, investment adviser or investment adviser agent expires due to the registrant's failure to renew, within one year of such expiration, the commissioner may nevertheless institute a revocation or suspension proceeding or issue an order suspending or revoking the registration under subsection (a) of this section.

(f) No order may be entered under this section except as provided in subsection (c) of this section without (1) appropriate prior notice to the applicant or registrant and to the employer or prospective employer if such applicant or registrant is an agent or investment adviser agent, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

(g) Notwithstanding the provisions of subsection (a) of this section, the commissioner may deny an application for registration as a broker-dealer, agent, investment adviser, investment adviser agent or branch office if the applicant fails to respond to any request for information required under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended

Substitute House Bill No. 5114

by this act, or the regulations adopted pursuant to said sections. The commissioner shall notify the applicant in writing that if such information is not submitted within sixty days the application shall be deemed abandoned and denied. An application filing fee paid prior to the date an application is denied pursuant to this subsection shall not be refunded. Denial of an application pursuant to this subsection shall not preclude the applicant from submitting a new application for registration under said sections. The hearing requirement provided for in subsection (f) of this section shall not apply to the denial of an application issued pursuant to this subsection.

Sec. 11. Section 36b-16 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

No person shall offer or sell any security in this state unless (1) it is registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, (2) the security or transaction is exempted under section 36b-21, as amended by this act, or (3) the security is a covered security provided such person complies with any applicable requirements in subsections (c), (d) and (e) of section 36b-21.

Sec. 12. Subsections (c) and (d) of section 36b-19 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) Every registration statement shall specify (1) the amount of securities to be offered; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; (3) the name of any broker-dealer or agent of issuer registered to do business under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, who may offer the securities in this state; and (4) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

Substitute House Bill No. 5114

(d) Any document filed under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

Sec. 13. Subsection (k) of section 36b-19 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(k) When any securities have been sold without compliance with the provisions of section 36b-16, as amended by this act, any person may apply in writing on forms designated by the commissioner for the registration by qualification of such securities. If the commissioner finds as the result of an investigation that no person has been defrauded, prejudiced or damaged by the prior failure to effect a registration, the commissioner may permit such securities to be registered upon the payment of fifty dollars plus the fees prescribed in this section. Such registration by qualification under this subsection shall not relieve anyone who has violated any provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, from prosecution hereunder.

Sec. 14. Subsection (a) of section 36b-20 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds (1) that the order is in the public interest and (2) that: (A) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any report under subsection (j) of section 36b-19, is incomplete in any material respect but is not abandoned pursuant to subsection (e) of this section

Substitute House Bill No. 5114

or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact; (B) any provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, order or condition lawfully imposed under said sections has been wilfully violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, provided the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter; (C) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; except the commissioner (i) may not institute a proceeding against an effective registration statement under this subparagraph more than one year from the date of the order or injunction relied on, and (ii) may not enter an order under this subparagraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section; (D) the issuer's enterprise or method of business includes or would include activities which are illegal where performed; (E) the offering has worked or tended to work a fraud upon purchasers or would so operate; (F) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options; (G) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (4) of subsection (b) of section 36b-17; (H) the applicant or registrant has failed to pay the proper filing fee; but the commissioner may enter

Substitute House Bill No. 5114

only a denial order under this clause and he shall vacate any such order when the deficiency has been corrected; or (I) the issuer is a blank check company. The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within one hundred eighty days of the effective date of such registration statement.

Sec. 15. Subsection (b) of section 36b-21 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) The following transactions are exempted from sections 36b-16 and 36b-22, as amended by this act: (1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not; (2) any nonissuer transaction by a registered agent of a registered broker-dealer in a security of a class that has been outstanding in the hands of the public for at least ninety days provided, at the time of the transaction: (A) The security is sold at a price reasonably related to the current market price of the security; (B) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security; (C) a nationally recognized securities manual contains (i) a description of the business and operations of the issuer; (ii) the names of the issuer's officers and directors or, in the case of a non-United States issuer, the corporate equivalents of such persons in the issuer's country of domicile; (iii) an audited balance sheet of the issuer as of a date within eighteen months, or in the case of a reorganization or merger where the parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and (iv) an audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer, if in existence for less

Substitute House Bill No. 5114

than two years, or in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and (D) the issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer, including any predecessors of the issuer (i) has been engaged in continuous business for at least three years or (ii) has total assets of at least two million dollars based on an audited balance sheet of the issuer as of a date within eighteen months, or in the case of a reorganization or merger where the parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet. The exemption in this subdivision shall not be available for any distribution of securities issued by a blank check company, shell company, dormant company or any issuer that has been merged or consolidated with or has bought out a blank check company, shell company or dormant company unless the issuer or any predecessor has continuously operated its business for at least the preceding five years and has had gross operating revenue in each of the preceding five years, including gross operating revenue of at least five hundred thousand dollars per year in three of the preceding five years; (3) any nonissuer distribution of an outstanding security if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security; (4) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by regulation require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period or that the confirmation

Substitute House Bill No. 5114

delivered to the purchaser or a memorandum delivered in connection therewith shall confirm that such purchase was unsolicited by the broker-dealer or any agent of the broker-dealer; (5) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters; (6) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit; (7) any transaction by an executor, administrator, state marshal, marshal, receiver, trustee in bankruptcy, creditors' committee in a proceeding under the Bankruptcy Act, guardian or conservator; (8) any transaction executed by a bona fide pledgee without any purpose of evading sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act; (9) any offer or sale to a bank and trust company, a national banking association, a savings bank, a savings and loan association, a federal savings and loan association, a federal savings bank, a credit union, a federal credit union, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity; (10) (A) subject to the provisions of this subdivision, any transaction not involving a public offering within the meaning of Section 4(2) of the Securities Act of 1933, but not including any transaction specified in the rules and regulations thereunder. (B) Subject to the provisions of this subdivision, any transaction made in accordance with the uniform exemption from registration for small issuers authorized in Section 19(d)(3)(C) of the Securities Act of 1933. (C) The exemptions set forth in subparagraphs (A) and (B) of this subdivision shall not be available for transactions in securities issued by any blank check company, shell company or dormant company. (D) The exemptions set forth in subparagraphs (A) and (B) of this subdivision may, with respect to any

Substitute House Bill No. 5114

security or transaction or any type of security or transaction, be modified, withdrawn, further conditioned or waived as to conditions, in whole or in part, conditionally or unconditionally, by the commissioner, acting by regulation, rule or order, on a finding that such regulation, rule or order is necessary or appropriate in the public interest or for the protection of investors. (E) A nonrefundable fee of one hundred fifty dollars shall accompany any filing made with the commissioner pursuant to this subdivision; (11) any offer or sale of a preorganization certificate or subscription if (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (B) the number of subscribers does not exceed ten, and (C) no payment is made by any subscriber; (12) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than ninety days of their issuance, if (A) no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the issuer first files a notice, in such form and containing such information as the commissioner may by regulation prescribe, specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next ten full business days; (13) any offer, but not a sale, of a security for which registration statements have been filed under both sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either said sections or the Securities Act of 1933; (14) any transaction exempt under Section 4(6) of the Securities Act of 1933, and the rules and regulations thereunder. The issuer shall, prior to the first sale, file with the commissioner a notice, in such form and containing such information as the commissioner may by regulation, rule or order prescribe. A nonrefundable fee of one hundred fifty

Substitute House Bill No. 5114

dollars shall accompany any such filing made pursuant to this subdivision; (15) any transaction if all the following conditions are satisfied: (A) The offer and sale is effectuated by the issuer of the security; (B) the total number of purchasers of all securities of the issuer does not exceed ten. A subsequent sale of securities that (i) is registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, (ii) is sold pursuant to an exemption under said sections other than this subdivision, or (iii) involves covered securities, shall not be integrated with a sale pursuant to this exemption in computing the number of purchasers hereunder. For the purpose of this subdivision, each of the following is deemed to be a single purchaser of a security: A husband and wife, a child and the parent or guardian of such child when the parent or guardian holds the security for the benefit of the child, a corporation, a partnership, an association or other unincorporated entity, a joint stock company or a trust, but only if the corporation, partnership, association, unincorporated entity, joint stock company or trust was not formed for the purpose of purchasing the security; (C) no advertisement, article, notice or other communication published in any newspaper, magazine or similar medium, broadcast over television or radio or communicated by other electronic means or any other general solicitation is used in connection with the sale; and (D) no commission, discount or other remuneration is paid or given directly or indirectly in connection with the offer and sale, and the total expenses, excluding legal and accounting fees, in connection with the offer and sale do not exceed one per cent of the total sales price of the securities. For purposes of this subdivision, a difference in the purchase price among the purchasers shall not, in and of itself, be deemed to constitute indirect remuneration; (16) any transaction exempt under Rule 701, 17 CFR Section 230.701 promulgated under Section 3(b) of the Securities Act of 1933; and (17) any other transaction that the commissioner may exempt, conditionally or unconditionally, on a finding that registration is not necessary or appropriate in the public interest or for the protection of

Substitute House Bill No. 5114

investors.

Sec. 16. Subsection (g) of section 36b-21 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(g) In any proceeding under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, the burden of proving an exemption, preemption, exclusion or an exception from a definition is upon the person claiming it.

Sec. 17. Section 36b-22 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The commissioner may, by regulation adopted, in accordance with chapter 54, or order, require the filing of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser registered or required to be registered under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, unless the security or transaction is (1) exempted by subsection (a) or (b) of section 36b-21, as amended by this act, except for transactions exempted by subdivision (13) of subsection (b) of said section 36b-21, as amended by this act, or (2) a covered security.

Sec. 18. Section 36b-23 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

No person shall make or cause to be made orally or in any document filed with the commissioner or in any proceeding, investigation or examination under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with the

Substitute House Bill No. 5114

statement, omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

Sec. 19. Subsection (a) of section 36b-24 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Neither (1) the fact that an application for registration under sections 36b-6 to 36b-15, inclusive, as amended by this act, or a registration statement under sections 36b-16 to 36b-20, inclusive, as amended by this act, has been filed, nor (2) the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction.

Sec. 20. Section 36b-25 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, shall be administered by the commissioner.

(b) Neither the commissioner nor any of his officers or employees shall use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, authorizes the commissioner or any of his officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation

Substitute House Bill No. 5114

under said sections. No provision of said sections either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his officers or employees.

Sec. 21. Subsections (a) and (b) of section 36b-26 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The commissioner may, subject to the provisions of the Freedom of Information Act, as defined in section 1-200: (1) Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated, is violating or is about to violate any provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation or order thereunder, or to aid in the enforcement of said sections or in the prescribing of rules and forms thereunder, (2) require or permit any person to testify, produce a record or file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated or about which an action or proceeding is to be instituted, and (3) publish information concerning any violation of said sections or any regulation or order thereunder.

(b) For the purpose of any investigation or proceeding under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry. The commissioner may also issue subpoenas and subpoenas duces tecum in this state at the request of another state if the activities concerning which the information is sought would constitute a basis

Substitute House Bill No. 5114

for an investigation or proceeding under said sections had such activities occurred in this state.

Sec. 22. Section 36b-27 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Whenever it appears to the commissioner after an investigation that any person has violated, is violating or is about to violate any of the provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, or that the further sale or offer to sell securities would constitute a violation of said sections or any such regulation, rule or order, or that any person has engaged in a dishonest or unethical practice in the securities or commodities business within the meaning of sections 36b-31-15a to 36b-31-15d, inclusive, of the regulations of Connecticut state agencies, the commissioner may, in the commissioner's discretion, order (1) the person, (2) any other person that directly or indirectly controls such person and that is, was or would be a cause of the violation of such sections or any such regulation, rule or order, due to an act or omission such other person knew or should have known would contribute to such violation, or (3) any other person that has materially aided, is materially aiding or is about to materially aid in such violation, to cease and desist from the violations or the causing of or aiding in the violations of the provisions of said sections or of the regulations, rules or orders thereunder, or from the further sale or offer to sell securities constituting or which would constitute a violation of the provisions of said sections or of the regulations, rules or orders thereunder, or from further engaging in such dishonest or unethical practice and to take or refrain from taking such action that in the opinion of the commissioner will effectuate the purposes of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act. After such an order is issued, the person named in the order

Substitute House Bill No. 5114

may, within fourteen days after receipt of the order, file a written request for a hearing. Any such hearing shall be held in accordance with the provisions of chapter 54.

(b) Whenever it appears to the commissioner, after an investigation, that any person has violated any of the provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, or that the further sale or offer to sell securities would constitute a violation of said sections or any such regulation, rule or order, or that such person has engaged in a dishonest or unethical practice in the securities or commodities business within the meaning of sections 36b-31-15a to 36b-31-15d, inclusive, of the regulations of Connecticut state agencies, the commissioner may, in addition to any other remedy under this section, order the person to (1) make restitution of any sums shown to have been obtained in violation of any of the provisions of said sections or any such regulation, rule or order or as a result of such dishonest or unethical practice plus interest at the legal rate set forth in section 37-1, (2) provide disgorgement of any sums shown to have been obtained in violation of any of the provisions of said sections or any such regulation, rule or order or as a result of such dishonest or unethical practice, or (3) both make restitution and provide disgorgement. After such an order is issued, the person named in the order may, not later than fourteen days after receipt of the order, file a written request for a hearing. Any such hearing shall be held in accordance with the provisions of chapter 54.

(c) The commissioner, in the commissioner's discretion, may order any person who directly or indirectly controls a person liable under subsection (b) of this section or who has materially aided a person liable under subsection (b) of this section in violation of any of the provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under

Substitute House Bill No. 5114

said sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, to make restitution, provide disgorgement, or both, of any sums shown to have been obtained as a result of a dishonest or unethical practice or in violation of any of the provisions of said sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections. Such controlling person or aider shall be liable jointly and severally with and to the same extent as the person liable under subsection (b) of this section, unless such controlling person or aider allegedly liable under this subsection sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist. After such an order is issued, the person named in the order may, within fourteen days after receipt of the order, file a written request for a hearing. Any such hearing shall be held in accordance with the provisions of chapter 54. There shall be contribution as in cases of contract among the several persons so liable.

(d) (1) Whenever the commissioner finds as the result of an investigation that any person has violated any of the provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, the commissioner may send a notice to (A) such person, (B) any other person that directly or indirectly controls such person and that was a cause of the violation of said sections or any such regulation, rule or order, due to an act or omission such other person knew or should have known would contribute to such violation, or (C) any other person that has materially aided in such violation, by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. The notice shall be deemed received by the person on the earlier of the date of actual receipt or the date seven days after the date on which such notice was mailed or sent. Any such notice shall include: (i) A reference to the

Substitute House Bill No. 5114

title, chapter, regulation, rule or order alleged to have been violated; (ii) a short and plain statement of the matter asserted or charged; (iii) the maximum fine that may be imposed for such violation; (iv) a statement indicating that such person may file a written request for a hearing on the matters asserted not later than fourteen days after receipt of the notice; and (v) the time and place for the hearing.

(2) If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the charges made unless such person fails to appear at the hearing. Any such hearing shall be held in accordance with the provisions of chapter 54. After the hearing if the commissioner finds that the person has violated, caused a violation or materially aided in the violation of any of the provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by said sections, order that a fine not exceeding one hundred thousand dollars per violation be imposed upon such person. If such person fails to appear at the hearing, the commissioner may, as the facts require, order that a fine not exceeding one hundred thousand dollars per violation be imposed upon such person. The commissioner shall send a copy of any order issued pursuant to this subsection by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, to any person named in such order.

(e) Whenever it appears to the commissioner that any person has violated, is violating or is about to violate any of the provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, or that the further sale or offer to sell securities would constitute a violation of said sections or any such regulation, rule or order, the commissioner may, in the commissioner's discretion and in addition to

Substitute House Bill No. 5114

any other remedy authorized by this section, bring an action in the superior court for the judicial district of Hartford to: (1) Enjoin the acts or practices and to enforce compliance with sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any such regulation, rule or order against (A) such person; (B) any other person who directly or indirectly controls such person and who is, was or would be a cause of the violation of said sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any such regulation, rule or order due to an act or omission such other person knew or should have known would contribute to such violation; or (C) any other person who has materially aided, is materially aiding or is about to materially aid in such violation. Upon a proper showing, the court may issue a permanent or temporary injunction, restraining order or writ of mandamus and may order other appropriate or ancillary relief, which may include: (i) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, who may be the commissioner or a person recommended by the commissioner, for the defendant or the defendant's assets. If a person other than the commissioner is appointed receiver or conservator, the commissioner shall be a party to the receivership proceeding or conservatorship with standing to initiate or contest any motion, and the views of the commissioner shall be entitled to deference unless they are inconsistent with the plain meaning of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act. The commissioner may appoint such employees and retain such consultants as the commissioner deems necessary for liquidating or administering the affairs of the defendant; (ii) an order directing the commissioner to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property; (iii) an order directing the payment of prejudgment and postjudgment interest; or (iv) an order covering such other relief as the court considers appropriate. The court shall not

Substitute House Bill No. 5114

require the commissioner to post a bond; (2) seek a court order imposing a fine not to exceed one hundred thousand dollars per violation against the person found to have violated, caused a violation or materially aided in the violation of any provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act; (3) apply for an order whereby the person that violated any of the provisions of said sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections shall be ordered to: (A) Make restitution of those sums shown by the commissioner to have been obtained by such person in violation of any of the provisions of said sections or any such regulation, rule or order, plus interest at the rate set forth in section 37-3a; (B) provide disgorgement of any sums shown to have been obtained in violation of any of the provisions of said sections or any such regulation, rule or order; (C) both make restitution and provide disgorgement; or (4) apply for an order whereby any person who directly or indirectly controls a person liable under subdivision (3) of this subsection, or who has materially aided a person liable under subdivision (3) of this subsection in a violation of any of the provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, to make restitution, provide disgorgement, or both, of any sums shown to have been obtained as a result of such violation. Such controlling person or aider shall be liable jointly and severally with and to the same extent as the person liable under subdivision (3) of this subsection, unless such controlling person or aider allegedly liable under this subdivision sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist. Such restitution or disgorgement shall, at the option of the court, be payable to the receiver or conservator appointed pursuant to this subsection, or

Substitute House Bill No. 5114

directly to the persons whose assets were obtained in violation of any provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any such regulation, rule or order.

(f) Any time after the issuance of an order or notice provided for in subsection (a), (b) or (c) or subdivision (1) of subsection (d) of this section, the commissioner may accept an agreement by any respondent named in such order or notice to enter into a written consent order in lieu of an adjudicative hearing. The acceptance of a consent order shall be within the complete discretion of the commissioner. The consent order provided for in this subsection shall contain (1) an express waiver of the right to seek judicial review or otherwise challenge or contest the validity of the order or notice; (2) a provision that the order or notice may be used in construing the terms of the consent order; (3) a statement that the consent order shall become final when issued; (4) a specific assurance that none of the violations alleged in the order or notice shall occur in the future; (5) such other terms and conditions as are necessary to further the purposes and policies of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act; (6) the signature of each of the individual respondents evidencing such respondent's consent; and (7) the signature of the commissioner or of the commissioner's authorized representative.

Sec. 23. Subsections (b) and (c) of section 36b-28 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Any person who wilfully violates any other provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, shall be fined not more than two thousand dollars or imprisoned for not more than two years, or both.

(c) No information may be returned under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, more than five years after the

Substitute House Bill No. 5114

alleged violation.

Sec. 24. Subsection (e) of section 36b-29 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(e) Every cause of action under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, survives the death of any person who might have been a plaintiff or defendant.

Sec. 25. Subsections (h) to (j), inclusive, of section 36b-29 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective from passage*):

(h) No person who has made or engaged in the performance of any contract in violation of any provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation or order thereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any cause of action on the contract.

(i) Any condition, stipulation or provision binding any person acquiring any security or receiving investment advice to waive compliance with any provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation or order thereunder is void.

(j) The rights and remedies provided by sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, are in addition to any other rights or remedies that may exist at law or in equity.

Sec. 26. Section 36b-31 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Substitute House Bill No. 5114

(a) The commissioner may from time to time make, amend and rescind such regulations, forms and orders as are necessary to carry out the provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, including regulations, forms and orders governing registration statements, notice filings, applications, and reports, and defining any terms, whether or not used in said sections, insofar as the definitions are not inconsistent with the provisions of said sections. For the purpose of regulations, forms and orders, the commissioner may classify securities, persons and matters within his or her jurisdiction, and prescribe different requirements for different classes.

(b) No regulation, form or order may be made, amended or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act. In prescribing regulations, forms and orders, the commissioner may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of said sections to achieve maximum uniformity in the form and content of registration statements, notice filings, applications and reports wherever practicable.

(c) To encourage uniform interpretation and administration of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, and effective securities regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of other states, Canadian provinces or territories, or other countries, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization of securities officials or agencies, and any governmental law enforcement or

Substitute House Bill No. 5114

regulatory agency. The cooperation authorized by this subsection includes, but is not limited to, the following actions: (1) Establishing central depositories for the registration of securities or securities industry personnel under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, and for documents or records required or allowed to be filed with or maintained by the commissioner under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act; (2) conducting joint examinations and investigations; (3) sharing and exchanging information and documents subject to the restrictions of chapter 3; (4) sharing and exchanging personnel; and (5) executing joint agreements, memoranda of understanding and orders.

(d) Subject to Section 15(h) of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the commissioner may, by regulation or order, prescribe: (1) The form and content of financial statements required under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act; (2) the circumstances under which consolidated financial statements shall be filed; and (3) whether any required financial statements shall be certified by independent certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting principles.

(e) Any regulations issued pursuant to the provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, shall be adopted in accordance with the provisions of chapter 54.

(f) The commissioner, or employees of the Department of Banking authorized by the commissioner, may, whether or not requested by any person, issue declaratory rulings pursuant to section 4-176 or written advisory interpretations of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, including interpretation of the applicability of any provision of said sections, or may issue determinations that the commissioner will not institute a proceeding

Substitute House Bill No. 5114

or an action under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, against a specified person for engaging in a specified act, practice or course of business if the determination is consistent with the purposes fairly intended by the policy and provisions of said sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act.

(g) Every hearing in an administrative proceeding shall be public.

(h) No provision of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, imposing any liability applies to any act done or omitted in good faith in conformity with any regulation, form, order, advisory interpretation or no action determination of the commissioner, notwithstanding that the regulation, form, order, advisory interpretation or no action determination may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Sec. 27. Subsection (b) of section 36b-32 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, and all denial, suspension or revocation orders which have ever been entered under said sections. Such register shall be open for public inspection.

Sec. 28. Subsection (d) of section 36b-32 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(d) Upon request and at such charges as provided for in the Freedom of Information Act, as defined in section 1-200, the

Substitute House Bill No. 5114

commissioner shall furnish to any person photostatic or other copies, certified under the commissioner's seal of office if requested, of any entry in the register or any document which is a matter of public record or a certification that such public record does not exist. In any proceeding or prosecution under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, any copy so certified is prima facie evidence of the contents of the entry or document certified and a certificate by the commissioner of a record's nonexistence is prima facie evidence of the nonexistence of such record.

Sec. 29. Subsection (b) of section 36b-32a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) The Philanthropy Protection Act of 1995, Public Law 104-62, shall not apply in any administrative or judicial action as a defense to any claim that any person, security, interest, or participation of the type described in said act and the amendments made by said act is subject to the provisions of sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act.

Sec. 30. Subsections (g) and (h) of section 36b-33 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective from passage*):

(g) Every applicant for registration under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, every investment adviser exempt under subsection (e) of section 36b-6, and every issuer, other than the United States, any state, Canada, any other foreign government with which the United States currently maintains diplomatic relations, or any issuer of covered securities under Section 18(b)(1) of the Securities Act of 1933, which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as

Substitute House Bill No. 5114

the commissioner by regulation prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her successor executor or administrator which arises under sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation or order thereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, to the defendant or respondent at the defendant's or respondent's last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by sections 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act, or any regulation or order thereunder, and such person has not filed a consent to service of process under subsection (g) of this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person's appointment of the commissioner or the commissioner's successor in office to be such person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against such person or such person's successor executor or administrator which grows out of that conduct and which is brought under said sections or any regulation or

Substitute House Bill No. 5114

order thereunder, with the same force and validity as if served on such person personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, to the defendant or respondent at the defendant's or respondent's last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Sec. 31. Subsection (b) of section 20-329bb of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Any real property securities dealer who is required to be licensed and to obtain a permit under the provisions of said sections shall be exempt from the provisions of sections 36a-380 to 36a-386, inclusive, 36a-395 to 36a-399, inclusive, 36a-535 to 36a-546, inclusive, and 36b-2 to [36b-33] 36b-34, inclusive, as amended by this act.